

DAVID A. JOFFE, ESQ.

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November 5, 2021

VIA ECF

The Honorable Valerie E. Caproni
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square,
New York, NY 10007

Re: Joffe v. King & Spalding LLP, No. 17-cv-3392-VEC-SDA

Dear Judge Caproni:

The undersigned is the plaintiff in the above-captioned action, proceeding pro se. The undersigned writes in response to Defendant's letter dated November 5, 2021 (Doc. No. 295) concerning various issues raised at the final pretrial conference.

ZTE Documents (Plaintiff's Exhibits 28, 49, 54, 56, and 61)

King & Spalding requests that the Court admit one ZTE document (P-28) in its entirety to "enable Defendant to provide context," admit others (P-49, P-54, P-56) in highly-redacted format, and reject yet another (P-61) in its entirety.

The undersigned fully agrees with King & Spalding that P-28 should be admitted in its entirety in order "to enable Defendant to provide context."

However, the undersigned respectfully submits that P-49, P-54, P-56, and P-61 should also be admitted in their entirety—in order to enable Plaintiff to provide context. As Defendant's prolix explanation for excluding P-61 itself demonstrates, at trial the parties will likely sharply dispute the proper context of all five of the "ZTE Documents" and their significance to the undersigned's reasonable good faith belief. The undersigned's ability to establish this element will be materially prejudiced if the jury cannot see the documents, in their full context, for itself.¹

¹ Indeed, at trial Defendant intends to show the jury, inter alia, multiple unredacted briefs from the ZTE Matter in order to argue that: "Mr. Joffe participated in it. He helped draft it. He was perhaps the principal draftsman in it. The brief makes the case as to why sanctions were inappropriate. And Mr. Joffe claims that." Nov. 2, 2021 Tr. 185:2-6. If King & Spalding already has free reign to flip to whatever page from whatever document in the ZTE Matter it finds helpful to its position, consigning the undersigned (who has the burden of proof!) to snippets from the documents helpful to his does not avoid "undue prejudice" for the Firm; it only stacks the deck further in the other direction.

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Privilege Log (Plaintiff's Exhibit 125)

The undersigned has submitted a proposed redacted version of P-125 that is limited to privilege log entries reflecting emails with the same subject line as the undersigned's July 25, 2016 Email in which he raised "glaring red flags."

Public Dial Out Number for Trial

The undersigned has no objection to the Court's current intent not to provide a public dial out number for the trial.

Electronic Exhibits and Modifications

Earlier today the undersigned dropped off at Chambers a USB drive containing an updated set of Plaintiff's exhibits and an enclosed updated index in MS Word format. At 2:47 p.m. today, the undersigned sent courtesy copies of these documents to defense counsel via email. The undersigned respectfully refers the Court to the enclosed updated index for a list of the modifications that were made to Plaintiff's exhibits.

Proposed Instruction Regarding Questions Read to Mr. Joffe

The undersigned has no objection to Defendant's proposed charge, but respectfully requests that this proposed charge be read alongside the undersigned's proposed charge concerning his pro se status that was submitted earlier today (see Doc. No. 293).

Thank you for your consideration of the foregoing.

Respectfully submitted,

/s/ David A. Joffe
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Cc (via ECF): Counsel of record